

MTC EXHIBIT “E”

Videotaped Deposition of Janssen Thompson

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CALEB BUTLER and JEREMY)
PENNINGTON,)
Plaintiffs,)
VS.) Case No. 1:22-CV-00367
BNSF RAILWAY COMPANY,)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF
JANSSEN THOMPSON
MAY 12, 2023
(REPORTED REMOTELY)

ORAL AND VIDEOTAPED DEPOSITION OF JANSSEN THOMPSON,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on May 12, 2023, from 9:09 a.m. to 12:02
p.m., before Donna Wright, CSR in and for the State of
Texas, reported by machine shorthand and remotely via
Zoom, pursuant to the Federal Rules of Civil Procedure,
the 22nd Emergency Order Regarding the COVID-19 State
of Disaster, and any stipulations or agreements stated
on the record or attached hereto.

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<p>54</p> <p>1 recommendation after reviewing the transcript whether 2 or not there was any rules violations.</p> <p>3 Q. And then once that recommendation is made, 4 then someone in BNSF's Labor Relations department then 5 also looks over the transcript and the exhibits?</p> <p>6 A. Typically in dismissal cases, yes, they do 7 review those cases, or during the appeal process Labor 8 Relations will review them.</p> <p>9 Q. And critical work practice violations can 10 result in dismissal, can't they?</p> <p>11 A. They can -- they can -- they could -- or they 12 can result in dismissal.</p> <p>13 Q. And then also would you -- as the general 14 manager in a situation like this, if there is a 15 recommendation of discipline, would you have been 16 provided the transcript and the exhibits to then take a 17 look at and give your opinion about whether or not 18 there -- the charges were proven and whether the 19 discipline is appropriate?</p> <p>20 A. Yes, I would be given those documents to 21 review in regard to any testimony, et cetera.</p> <p>22 Q. Now, if -- does BNSF have any rule that 23 says -- strike that.</p> <p>24 Why didn't BNSF preserve a copy of the 25 exhibits and the audio transcript of the formal</p>	<p>56</p> <p>1 keep a copy of the transcripts under the collective 2 bargain agreement.</p> <p>3 Q. Did anyone contact you and say, "We're going 4 to cancel this investigation. What should we do with 5 the transcript?"</p> <p>6 A. No. I made the decision to cancel the 7 investigation, I made that decision myself.</p> <p>8 Q. Okay. Did you instruct Mr. Christian or 9 anyone else at BNSF to not keep the evidence that was 10 educed and brought forth during the course of this 11 investigation to determine the facts and circumstances 12 surrounding whether this train crew violated those six 13 rules they were charged with?</p> <p>14 A. There was -- I told them that there was 15 nothing in the collective bargain agreement that 16 required us to keep a copy of the transcript, and I 17 also verified that with Labor Relations if we needed to 18 keep anything. And there is nothing in the collective 19 bargain agreement since there was no discipline and the 20 investigation was canceled.</p> <p>21 Q. So prior to -- did you instruct Mr. Christian 22 to not preserve the evidence?</p> <p>23 A. I don't recall the conversation exactly. What 24 I did tell them is there is nothing under the 25 collective bargain agreement that says we have to keep</p>
<p>55</p> <p>1 investigation of October 14, 2021?</p> <p>2 A. The investigation was canceled prior to its 3 conclusion.</p> <p>4 Q. Yes, sir. Where is BNSF's policy that says 5 when we have an injured employee and we're going to be 6 discussing the circumstances -- we know he's injured, 7 he's reported it to us, we're going to be discussing 8 the circumstances around that injury, and we're going 9 to have an investigation into that; and then when it's 10 all over with, if we cancel the investigation, we're 11 not going to preserve the evidence that was -- that was 12 established and that happened the entire day, where is 13 that policy at?</p> <p>14 A. The policy in terms of transcripts?</p> <p>15 Q. Yes, sir. Where is there a policy that says 16 BNSF, you're not to preserve evidence of an audio 17 recording of the plaintiff, Mr. Butler, describing what 18 happened, the exhibits that were attached, where is the 19 policy saying that it is acceptable to not preserve 20 that?</p> <p>21 A. So if you look under the collective bargain 22 agreement, and this was an investigation under the -- 23 now under the collective bargain agreement. And if 24 there is -- if there is -- if there is -- if the 25 investigation is canceled, there is no requirement to</p>	<p>57</p> <p>1 the transcript of the investigation. And I don't -- 2 and I don't recall, but I don't believe there was any 3 request from any representatives or anyone else. And I 4 don't know if anyone, in terms of the representative, 5 recorded anything or not because they have a right to 6 do that in the investigation.</p> <p>7 So I'm not aware of that, but BNSF did. 8 not keep a copy of that and was not required to.</p> <p>9 Q. Who in Labor Relations with -- strike that. 10 Who did you speak with in Labor Relations 11 that told you it was acceptable not to preserve the 12 recordings and the evidence from October -- the 13 October 14th formal investigation from the evidence 14 that happened that day? Who told you that --</p> <p>15 MS. TRAVIS: Objection, form.</p> <p>16 Q. -- in Labor Relations?</p> <p>17 MS. TRAVIS: Objection, form. You can 18 answer.</p> <p>19 A. The person that I talked to in Labor Relations 20 was John Murphy.</p> <p>21 Q. Who is John Murphy?</p> <p>22 A. He's a director in Labor Relations.</p> <p>23 Q. Is he an attorney?</p> <p>24 A. He may be. I believe he may be. But I'm -- 25 but he was talking to me in terms of Labor Relations.</p>

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<p>58</p> <p>1 I don't think he practices law that I'm aware of.</p> <p>2 Q. All right. Did knowing -- you told us earlier</p> <p>3 you knew Mr. Butler was injured in a hard coupling,</p> <p>4 right?</p> <p>5 A. Yes, sir, I do -- I do know that he was</p> <p>6 injured, yes, sir.</p> <p>7 Q. Before you allowed this evidence to be</p> <p>8 destroyed and not preserved, did you contact anyone</p> <p>9 with legal and say, "What should we do with this</p> <p>10 evidence?"</p> <p>11 A. So --</p> <p>12 MS. TRAVIS: Objection, form. Hang on.</p> <p>13 Objection, form.</p> <p>14 And, Mr. McGuire, I'll let him answer</p> <p>15 that question, but I'm instructing the witness not to</p> <p>16 answer about communications with anybody in the law</p> <p>17 department on this case because that would be protected</p> <p>18 by the attorney-client privilege.</p> <p>19 So -- but your question, Mr. McGuire, was</p> <p>20 did he contact somebody in legal, and I will let him</p> <p>21 answer that question. I just wanted to make sure he</p> <p>22 didn't volunteer.</p> <p>23 MR. McGUIRE: Thank you, Susan. And I</p> <p>24 realize we're treading on some fine ground here. But</p> <p>25 let me say this while we're on the record, that</p>	<p>60</p> <p>1 decided by the judge. I'm not disagreeing that if --</p> <p>2 you know, that -- if it's a crime, you know, then it</p> <p>3 would not be protected by the attorney-client</p> <p>4 privilege.</p> <p>5 I'm not necessarily -- but I am -- or I</p> <p>6 do disagree with your characterizing not maintaining a</p> <p>7 transcript that's not required to be maintained as</p> <p>8 spoliation or a crime. So we might need to get over</p> <p>9 that hurdle first before the -- you know, with the</p> <p>10 court, and that's completely fine.</p> <p>11 Q. So let me -- and before you answer this</p> <p>12 question, Mr. Thompson, make sure that she doesn't tell</p> <p>13 you not to answer this question before you blurt out</p> <p>14 the answer. Okay?</p> <p>15 All right. Did you consult with anyone</p> <p>16 in the legal department before you permitted the</p> <p>17 evidence that was discovered and that took place and</p> <p>18 that was tape-recorded and offered into evidence during</p> <p>19 the formal investigation discussing this hard coupling,</p> <p>20 did you -- did you, before you allowed that evidence to</p> <p>21 not be preserved, discuss that with anyone in BNSF's</p> <p>22 legal department?</p> <p>23 MS. TRAVIS: And, Mr. Thompson, at this</p> <p>24 point -- it's just a yes or no at this point, if you</p> <p>25 would, please.</p>
<p>59</p> <p>1 destroying evidence would be a crime and would be a</p> <p>2 violation, and so, therefore, it's not protected by the</p> <p>3 attorney-client privilege. And so if those discussions</p> <p>4 were had, then I think we will need to take this up at</p> <p>5 some point. So --</p> <p>6 MS. TRAVIS: And that -- oh, go ahead.</p> <p>7 MR. McGUIRE: I get what you're saying --</p> <p>8 MS. TRAVIS: I do want to say something</p> <p>9 when you're finished.</p> <p>10 MR. McGUIRE: Yeah, yeah. I get what</p> <p>11 you're saying. And I'm just stating that spoliation of</p> <p>12 evidence is not protected by the attorney-client</p> <p>13 privilege. That's the -- so I asked the question and I</p> <p>14 can --</p> <p>15 MS. TRAVIS: And I --</p> <p>16 MR. McGUIRE: Look, I'm not fussing at</p> <p>17 all here, Susan. We're trying to do our jobs.</p> <p>18 MS. TRAVIS: Of course.</p> <p>19 MR. McGUIRE: And I get this. I'll ask</p> <p>20 the question, he can answer that question or not. But</p> <p>21 I just wanted to put what our position is going to be</p> <p>22 on the record. That's all.</p> <p>23 MS. TRAVIS: Sure, sure, sure. No, I'm</p> <p>24 not fussing here. We disagree with your spoliation of</p> <p>25 evidence theory, and so that may be needed to be</p>	<p>61</p> <p>1 A. Yes.</p> <p>2 MR. McGUIRE: So, Susan, just so that we</p> <p>3 can preserve, I would start asking questions about who</p> <p>4 he spoke with and what they told him and what he did</p> <p>5 with that information. And so -- and I don't want to</p> <p>6 waive this and I can go through each one of those, but</p> <p>7 my impression is you're going to tell him with regard</p> <p>8 to each one of those questions to not answer it because</p> <p>9 you believe it's protected by the attorney-client</p> <p>10 privilege; is that correct?</p> <p>11 MS. TRAVIS: That is correct, if you're</p> <p>12 going to ask who, what was said -- and then what was</p> <p>13 the third question?</p> <p>14 MR. McGUIRE: Well, it's just the details</p> <p>15 surrounding who the -- who he spoke with in the legal</p> <p>16 department, what they told him to do with the evidence,</p> <p>17 and so all of the questions that come with that.</p> <p>18 And so are you okay with us briefing that</p> <p>19 issue and saying I'm not waiving those questions</p> <p>20 regarding the content and substance? I can go through</p> <p>21 each one of those questions right now and you can</p> <p>22 instruct him not to answer each one of them, or we can</p> <p>23 just take this up at another time.</p> <p>24 MS. TRAVIS: I don't mind either way,</p> <p>25 Clint, Mr. McGuire.</p>

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<p>1 MR. McGUIRE: Okay.</p> <p>2 MS. TRAVIS: However you feel like you</p> <p>3 would like to do.</p> <p>4 MR. McGUIRE: Okay. Well, then I'll go</p> <p>5 through and ask them that way.</p> <p>6 Q. So, Mr. Thompson, who all did you speak with</p> <p>7 in BNSF's legal department about preserving the</p> <p>8 evidence from the formal investigation transcript?</p> <p>9 MS. TRAVIS: I'm going to instruct you</p> <p>10 not to answer that question to the extent it -- well,</p> <p>11 because it invades the attorney-client privilege.</p> <p>12 Q. Mr. -- are you going to follow that advice,</p> <p>13 Mr. Thompson?</p> <p>14 A. Yes, I'm following the advice.</p> <p>15 Q. What did the persons in BNSF's legal</p> <p>16 department tell you to do with the evidence that was --</p> <p>17 that was educed during the formal investigation that</p> <p>18 BNSF conducted on October 14th concerning this hard</p> <p>19 coupling?</p> <p>20 MS. TRAVIS: I'm going to object to that</p> <p>21 question and instruct you not to answer, Mr. Thompson,</p> <p>22 because it invades the attorney-client privilege.</p> <p>23 Q. Are you going to follow that advice,</p> <p>24 Mr. Thompson?</p> <p>25 A. Yes, I am going to follow that advice.</p>	<p>62</p> <p>1 hard coupling with that Mr. Butler is claiming injured</p> <p>2 his back, right?</p> <p>3 A. So can you ask that question again, please?</p> <p>4 Q. Yes. You knew at the time that the evidence</p> <p>5 was not preserved that the formal investigation was</p> <p>6 there to discuss the facts and circumstances</p> <p>7 surrounding the very hard coupling that injured</p> <p>8 Mr. Butler's back?</p> <p>9 A. So still -- I'm still trying -- I'm still</p> <p>10 trying to understand your question about -- you know,</p> <p>11 what specifically the question is about the transcript,</p> <p>12 I guess. I'm sorry, sir.</p> <p>13 Q. No, no. That's what we're supposed to do</p> <p>14 here. So let me break it down a little bit and see if</p> <p>15 I can do a little better.</p> <p>16 You knew, as the general manager, that</p> <p>17 the investigation that BNSF was conducting was</p> <p>18 discussing the very hard coupling to determine whether</p> <p>19 or not Mr. Butler and Mr. Pennington and Cardoza</p> <p>20 violated the six rules you charged them with, and that</p> <p>21 very same hard coupling is the one that Mr. Butler says</p> <p>22 injured his back. You knew, didn't you?</p> <p>23 A. We knew the investigation was set to determine</p> <p>24 any of the rules violations associated with the -- with</p> <p>25 the hard coupling. A hard coupling incident is</p>
<p>63</p> <p>1 Q. Did you do what -- did you follow the advice</p> <p>2 of whoever you spoke with in BNSF's legal department</p> <p>3 about the evidence during the course -- that was</p> <p>4 discovered during the course of this hard coupling</p> <p>5 investigation?</p> <p>6 MS. TRAVIS: I'm going to object to that</p> <p>7 question and instruct you not to answer based on the</p> <p>8 attorney-client privilege.</p> <p>9 Q. And are you going to follow that advice?</p> <p>10 A. Yes, sir, I am going to follow that advice.</p> <p>11 Q. Okay. Now, Mr. Thompson, you -- how long did</p> <p>12 this formal investigation involving Mr. Butler and</p> <p>13 Mr. Pennington on Mr. Cardoza last, do you know?</p> <p>14 A. I do not know, sir.</p> <p>15 Q. Now, one of the things we would know is we</p> <p>16 would have an audio recording, if we preserved that,</p> <p>17 telling us how long it happened, right?</p> <p>18 A. If there was -- it would -- it would have the</p> <p>19 approximate time. I would assume most all of them do,</p> <p>20 yes, sir.</p> <p>21 Q. And you recognize that this audio recording,</p> <p>22 the very purpose of this formal investigation was to</p> <p>23 discuss the facts and circumstances surrounding whether</p> <p>24 or not Mr. Butler or Mr. Pennington violated any safety</p> <p>25 and operating rules, those six, which resulted in this</p>	<p>64</p> <p>1 something we normally have investigations on, so this</p> <p>2 would be like any other investigation for a hard</p> <p>3 coupling incident. We have been doing that protocol</p> <p>4 for a number of years, sir.</p> <p>5 Q. My question is a little different.</p> <p>6 In investigating this hard coupling --</p> <p>7 Mr. Butler had reported that this hard coupling injured</p> <p>8 his back. You knew that, right?</p> <p>9 A. Yes, we knew that there was an injury</p> <p>10 associated that occurred at some point. We did know</p> <p>11 that.</p> <p>12 Q. And so during the course of this investigation</p> <p>13 that was on film, where Mr. Cleveland testified during</p> <p>14 the course of that, at the very end of that</p> <p>15 investigation, many times the conducting officer will</p> <p>16 allow the parties to give a closing argument, right?</p> <p>17 A. Under the collective bargain agreement,</p> <p>18 employees do get a chance to make a statement along</p> <p>19 with the representative, sir.</p> <p>20 Q. And in this instance, do you realize that the</p> <p>21 entire investigation happened, and then Mr. Butler was</p> <p>22 giving his closing argument at the -- shortly before</p> <p>23 you were contacted about whether this investigation</p> <p>24 needed to proceed?</p> <p>25 A. I don't know the exact details of where the</p>
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<p>66</p> <p>1 investigation was at when Mr. Christian called me. So</p> <p>2 I do not know -- I do not know the exact timeline in</p> <p>3 terms of where he was at in the investigation process,</p> <p>4 sir.</p> <p>5 Q. Let me pull up this 10/15/21 Ty Christian</p> <p>6 document.</p> <p>7 A. Yes, sir.</p> <p>8 (Exhibit 35 marked)</p> <p>9 Q. Do you see down at the bottom it's got a</p> <p>10 BNSF 01099 Bates stamp, do you see that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. This is a document from BNSF, from Ty</p> <p>13 Christian to Mathew Prest. Who is Mathew Prest?</p> <p>14 A. He was director of Human Resources.</p> <p>15 Q. Okay. So let's look at the second paragraph</p> <p>16 of this where Mathew is asking Ty -- or sending an</p> <p>17 e-mail and asking him to see if the statements made</p> <p>18 herein are correct.</p> <p>19 So it says, quote, "We got to the closing</p> <p>20 statements of the investigation and Mr. Caleb Butler</p> <p>21 stated he believed BNSF was attempting to fire him</p> <p>22 because he reported an injury."</p> <p>23 Do you see that part?</p> <p>24 A. Yes, sir, I see that.</p> <p>25 Q. It says, "Normally closing statements would be</p>	<p>68</p> <p>1 Q. All right. If you need it, speak up and we</p> <p>2 will put it back up there.</p> <p>3 So my question was actually wrong, so I'm</p> <p>4 going to re-ask it again. The question -- I said</p> <p>5 Mr. Pennington as opposed to Mr. Christian.</p> <p>6 When -- did you receive two calls from</p> <p>7 Mr. Christian during the course of the formal</p> <p>8 investigation?</p> <p>9 A. Yes, sir, I did.</p> <p>10 Q. What was the -- number one, what was the time</p> <p>11 of the first call you received?</p> <p>12 A. I do not know the time. It was -- I don't</p> <p>13 remember -- I didn't -- I don't know the time or date</p> <p>14 or anything, sir. Sorry. I know the date, but I don't</p> <p>15 know the time and date.</p> <p>16 Q. Do you recall the substance of what that first</p> <p>17 call was about?</p> <p>18 A. He had called me to ask me if I had known</p> <p>19 that -- or what he should do, that -- I think there</p> <p>20 was -- a question came up about the locomotive defect,</p> <p>21 and did I know about the locomotive defect, and I --</p> <p>22 and what he should do, and I advised him to continue on</p> <p>23 with the investigation and to go ahead and continue</p> <p>24 asking questions of both the principals and the</p> <p>25 witnesses in the investigation.</p>
<p>67</p> <p>1 the end of the investigation."</p> <p>2 Do you see that part?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Now, does that refresh your memory -- and if</p> <p>5 you want me to put that back up, I'm happy to do it. I</p> <p>6 wasn't trying to -- hold on. Let me get it back up.</p> <p>7 All right. Feel free to take a look at</p> <p>8 that. I've got a different question, but feel free to</p> <p>9 take a look at that.</p> <p>10 A. So just to be clear, sir, I talked to Ty</p> <p>11 Christian twice during this investigation so I didn't</p> <p>12 know which time you were referring to, but I did talk</p> <p>13 to Mr. Christian twice. He took a recess and called me</p> <p>14 twice during the investigation process, sir.</p> <p>15 Q. Okay. So during the first conversation, do</p> <p>16 you recall what time it was that Mr. Pennington [sic]</p> <p>17 called you?</p> <p>18 A. No, I don't remember. It was -- it was -- it</p> <p>19 was early on in the investigation when he was</p> <p>20 questioning one of the witnesses, I believe. I don't</p> <p>21 recall specifics, sir.</p> <p>22 Q. Okay. And so let me -- do you want this up to</p> <p>23 look at or can I --</p> <p>24 A. That's fine, you can take it down. If we need</p> <p>25 to refer back, we can, sir. I'm good.</p>	<p>69</p> <p>1 Q. So when he asked you -- when he called you</p> <p>2 during the course of this investigation and asked you</p> <p>3 if you knew about the locomotive defect, what did you</p> <p>4 tell him?</p> <p>5 A. I don't remember, because I don't know if I</p> <p>6 knew at that time. I knew it was later on that I found</p> <p>7 out that there was a report, but that was -- I don't --</p> <p>8 but told him to go ahead and go through with the</p> <p>9 investigation, go forward in asking the questions.</p> <p>10 Q. All right. And what defect with the</p> <p>11 locomotive was he talking about at that point: the</p> <p>12 chair, the door handle, or the brakes?</p> <p>13 A. I do not recall, sir. I do not recall.</p> <p>14 Q. All right. And then you received a -- have</p> <p>15 you and I talked about everything that you remember</p> <p>16 about the first phone call?</p> <p>17 A. That's -- that's about the extent of the</p> <p>18 conversation I remember of the first -- the first call.</p> <p>19 Q. And is there anything you can go back and</p> <p>20 check, any notes, e-mails, text messages, anything like</p> <p>21 that that would give you any better recollection than</p> <p>22 what we have already talked about, about what happened</p> <p>23 during that first phone call?</p> <p>24 A. No, I don't recall any other documentation or</p> <p>25 anything else that I have to check on, sir.</p>

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<p>82</p> <p>1 this day. There was a joint conversation with BNSF's</p> <p>2 legal team and Labor Relations.</p> <p>3 Q. Okay. And -- but that would've been in the</p> <p>4 legal department?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. Now, other than the legal department,</p> <p>7 did -- and let me ask this. Was there -- or I can get</p> <p>8 into that some other time.</p> <p>9 But have we talked about -- I'm sorry,</p> <p>10 you looked like you were wanting to interject there.</p> <p>11 A. Yes, I need to -- I need to restate my -- you</p> <p>12 asked me did I talk to anybody besides John Madden and</p> <p>13 the legal department.</p> <p>14 Earlier I testified that I did talk to</p> <p>15 Dentin Chapman as well. So I did talk to him</p> <p>16 previously during that day as well, sir.</p> <p>17 Q. You know what, I left that out and I just</p> <p>18 forgot it. So Dentin Chapman, John Murphy, and Ty</p> <p>19 Christian?</p> <p>20 A. Uh-huh.</p> <p>21 Q. All right. Other than the legal department</p> <p>22 person, did you speak with anyone else other than</p> <p>23 Dentin Chapman, John Murphy, or Ty Christian about this</p> <p>24 investigation or canceling this investigation or what</p> <p>25 happened in the investigation?</p>	<p>84</p> <p>1 already talked about today under oath?</p> <p>2 A. No, I cannot think of anything else.</p> <p>3 Q. Thank you.</p> <p>4 Was -- was Mr. Madden or Mr. Nesterby</p> <p>5 disciplined by BNSF as a result of this?</p> <p>6 A. In terms of discipline, could you -- you know,</p> <p>7 what is your definition of discipline, I guess? I'm</p> <p>8 trying to understand your question here.</p> <p>9 Q. Were they reprimanded -- so let's go through</p> <p>10 that. When BNSF -- let's talk about scheduled</p> <p>11 employees.</p> <p>12 There's different levels of discipline</p> <p>13 when it comes to them. For example, they can be fired,</p> <p>14 they can have a record suspension, they can be given an</p> <p>15 ops test failure, they can be coached and counseled.</p> <p>16 Any of those things can be considered discipline. Is</p> <p>17 that an accurate statement from my standpoint?</p> <p>18 A. So thank you for clarifying that. Yeah,</p> <p>19 there's a lot of different -- so I just wanted to</p> <p>20 understand what -- the context of your question. So</p> <p>21 yes, sir.</p> <p>22 Q. So my question is, as a result of Jeff</p> <p>23 Madden's actions and conduct following this hard</p> <p>24 coupling, did BNSF issue any discipline of any sort or</p> <p>25 type to them?</p>
<p>83</p> <p>1 A. No, I do not recall talking to anyone else</p> <p>2 other than those individuals, sir.</p> <p>3 Q. Have we talked about the substance of all of</p> <p>4 the conversations that you had that you can remember</p> <p>5 with Mr. Chapman, Mr. Murphy, and Mr. Christian?</p> <p>6 A. At this time, I don't -- I don't know if there</p> <p>7 is anything else that I can think of at this time, sir.</p> <p>8 Q. And so let me follow it up with this.</p> <p>9 Are there any e-mails, documents, text</p> <p>10 messages, any type of correspondence of any type, voice</p> <p>11 recordings, that you would have exchanged with either</p> <p>12 Mr. Chapman, Mr. Murphy, or Mr. Christian that -- about</p> <p>13 this investigation or this hard coupling?</p> <p>14 A. I don't recall any of those type of</p> <p>15 documentations or communications, sir.</p> <p>16 Q. Now, the reason I'm asking this question,</p> <p>17 Mr. Thompson, is because I just want to make sure that</p> <p>18 I get your total recollection of everything that</p> <p>19 happened. So I understand what your answer is going to</p> <p>20 be, I just -- if somebody showed up and they had this</p> <p>21 great memory afterwards, then I'm asking this question</p> <p>22 to say, is there anything that you could use to refresh</p> <p>23 your recollection that would help you tell us more</p> <p>24 about the conversations you had with Mr. Chapman,</p> <p>25 Mr. Murphy, and Mr. Christian that you and I haven't</p>	<p>85</p> <p>1 A. So at the -- here is what I can say about Jeff</p> <p>2 Madden. At his year-end evaluation, he was rated</p> <p>3 "needs improvement in leadership."</p> <p>4 There were several components to that.</p> <p>5 Dentin Chapman, who was his supervisor or his manager,</p> <p>6 has all of the details. I was not a part of the</p> <p>7 conversation or a part of that, but we did have some</p> <p>8 things we did from a -- from a "needs improvement in</p> <p>9 terms of leadership" for his year-end -- for 2021</p> <p>10 year-end.</p> <p>11 Q. Did it affect his bonus in any way?</p> <p>12 A. I cannot speak to whether it affected his</p> <p>13 bonus or not. I do not -- I do not recall, sir.</p> <p>14 Q. Would Mr. Chapman know that?</p> <p>15 A. I do -- I do not know if he would or not. I</p> <p>16 do not know, sir.</p> <p>17 Q. Other than the review where it's -- where he</p> <p>18 was advised that -- let me ask this.</p> <p>19 When it says "needs improvement," was</p> <p>20 that in writing or was that just a verbal statement to</p> <p>21 Mr. Chapman -- I'm sorry -- Mr. Madden?</p> <p>22 So let me start that over.</p> <p>23 Was the "needs improvement" that was done</p> <p>24 for 2021, was that done verbally or was that put into</p> <p>25 writing or both?</p>

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<p>86</p> <p>1 A. Both.</p> <p>2 Q. And so was it related to this -- to</p> <p>3 Mr. Madden's conduct relating to this hard coupling and</p> <p>4 his actions and conduct surrounding that?</p> <p>5 A. It was multiple things, so it was not just one</p> <p>6 item. So -- and --</p> <p>7 Q. Understood. I didn't let you finish and I</p> <p>8 almost got away the whole deposition without</p> <p>9 interrupting you and I --</p> <p>10 A. That's okay.</p> <p>11 Q. So let me let you finish and then I'll come</p> <p>12 back and --</p> <p>13 A. I was -- I'll just restate it.</p> <p>14 When you look at the leadership, you look</p> <p>15 at the whole year, and they looked at everything that</p> <p>16 took place throughout the entire year. And I can't</p> <p>17 remember all of the components, but there was enough</p> <p>18 things in there that he was rated "needs improvement"</p> <p>19 in his leadership for 2021.</p> <p>20 Q. Yes, sir. And so let me ask this specific</p> <p>21 question.</p> <p>22 Did BNSF determine that as a result of</p> <p>23 Mr. Madden's conduct and actions surrounding Mr. Butler</p> <p>24 and this -- and this hard coupling and report of</p> <p>25 injury, did BNSF determine that his actions or conduct</p>	<p>88</p> <p>1 discipline meets the rule violation, right? You want</p> <p>2 the appropriate discipline for the appropriate conduct,</p> <p>3 right?</p> <p>4 A. I guess in a simple format that could be</p> <p>5 correct, yes, sir.</p> <p>6 Q. So let me ask you this.</p> <p>7 Do you believe that if a BNSF manager</p> <p>8 threatens to fire an employee for either reporting an</p> <p>9 unsafe condition or reporting a personal injury, that a</p> <p>10 "needs improvement in leadership" is the appropriate</p> <p>11 remedy for that, the appropriate discipline?</p> <p>12 A. I -- it's hard for me to answer your question</p> <p>13 in the context you stated it in because any time there</p> <p>14 is an allegation made against any officer, that's why</p> <p>15 we have HR do a thorough investigation. They</p> <p>16 investigate and talk to all parties and they will --</p> <p>17 they will determine whether the -- it was -- it was</p> <p>18 substantiated or not substantiated in terms of any of</p> <p>19 the allegations. And then based on that, we will</p> <p>20 review how that is compared to other cases consistent</p> <p>21 across BNSF.</p> <p>22 Q. And I guess my question is a little bit</p> <p>23 different. Thank you for your answer.</p> <p>24 My question is, let's assume that</p> <p>25 Mr. Pennington and Mr. Butler are telling the truth and</p>
<p>87</p> <p>1 needed improvement, was that in any way related to --</p> <p>2 not altogether, but was it related in whole or in part</p> <p>3 to his conduct surrounding Mr. Butler?</p> <p>4 A. There was a component -- from my</p> <p>5 understanding, a component of it -- of his rating was</p> <p>6 attributed to what happened, with him having a</p> <p>7 conversation with the crew prior to the formal</p> <p>8 investigation.</p> <p>9 Q. Okay. And can we agree that if he threatened</p> <p>10 to fire them for either reporting an injury or</p> <p>11 reporting a safety condition, that that would be</p> <p>12 inappropriate on his standpoint?</p> <p>13 A. If someone -- if anybody makes a threat</p> <p>14 against someone, they're going to be held accountable.</p> <p>15 So BNSF does not tolerate it, whether it's Jeff Madden,</p> <p>16 it doesn't matter who it is.</p> <p>17 Q. And what if -- do you believe that the -- I</p> <p>18 mean, because one of your jobs as the general manager</p> <p>19 is to make sure that when this -- when employees</p> <p>20 violate the rules, that they are held accountable for</p> <p>21 that. That's part of what you do as a general manager,</p> <p>22 right?</p> <p>23 A. That is a component of my job is to oversee</p> <p>24 rules compliance.</p> <p>25 Q. And part of that is making sure that the</p>	<p>89</p> <p>1 that they were threatened to be fired for reporting an</p> <p>2 injury and an unsafe condition. Do you believe that</p> <p>3 the proper discipline in that circumstance is a "needs</p> <p>4 improvement in leadership" at the end of the year?</p> <p>5 A. So if it -- in the context that you said it,</p> <p>6 if it was a -- a threat made against any employee at</p> <p>7 BNSF and it was -- it was substantiated through our</p> <p>8 investigation process, then in terms of the discipline,</p> <p>9 depending on the circumstances, et cetera, on the</p> <p>10 surface I would say "needs improvement" probably would</p> <p>11 not be -- would not be it, if -- just based on the way</p> <p>12 you described it.</p> <p>13 Q. Mr. Thompson, have I been polite and courteous</p> <p>14 to you?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right. Thank you for your time today.</p> <p>17 I'll pass the witness. And I wish you the best of luck</p> <p>18 in retirement and I hope this is the last time we see</p> <p>19 each other under these circumstances.</p> <p>20 A. Thank you, sir. Appreciate it.</p> <p>21 EXAMINATION</p> <p>22 BY MS. TRAVIS:</p> <p>23 Q. Mr. Thompson, when did you become employed by</p> <p>24 BNSF Railway?</p> <p>25 A. 1988.</p>